

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REBECCA G. LAVELLE,

Plaintiff,

v.

STEVEN K. LAVELLE; PAMELA
R. BARKER; MICHAEL E.
LITTLE; GERI M. NEWELL,
COMMISSIONER FRED
ARONOW,

Defendants.

NO. CV-07-039-RHW

**ORDER DISMISSING
AMENDED COMPLAINT**

Before the Court is Plaintiff's Amended Complaint against Defendants, Steven LaVelle, Pamela Barker, Michael Little, Geri Newell, and Fred Aronow (Ct. Rec. 10). Plaintiff is acting *pro se*. Plaintiff was granted permission to proceed *in forma pauperis* by court order (Ct. Rec. 3). The Court reviewed the complaint for legal sufficiency on June 1, 2007. (Ct. Rec. 5). The Court found that the original complaint was not legally sufficient to support a 42 U.S.C. § 1983 claim because most of the defendants were not state actors and the single defendant who was a state actor enjoyed judicial immunity (Ct. Rec. 5).

Without a valid § 1983 claim, the Court found that there was no subject matter jurisdiction and granted Plaintiff leave to amend her complaint within sixty days (Ct. Rec. 5 at 6). On August 10, 2007, Plaintiff filed a motion for an extension of time to file her Amended Complaint (Ct. Rec. 6). The Court granted Plaintiff's motion for an extension of time (Ct. Rec. 9). Plaintiff filed her

1 Amended Complaint on October 24, 2007 (Ct. Rec. 10). The Amended Complaint
2 is now examined for legal sufficiency under 28 U.S.C. § 1915(e).

3 BACKGROUND

4 The Amended Complaint asserts claims surrounding a child custody dispute
5 in State court. The Amended Complaint alleges that Plaintiff's mother, husband,
6 husband's attorney, court appointed Guardian Ad Litem, and a Commissioner have
7 deprived Plaintiff and her children of constitutional rights. More specifically,
8 Plaintiff alleges jurisdiction for violation of several federal statutes: 18 U.S.C. §
9 241 (conspiracy to deprive constitutional rights), 18 U.S.C. § 1016 (making a false
10 oath to the United States or one of its agencies), 18 U.S.C. § 1509 (obstruction of
11 United States court orders), 18 U.S.C. § 1623 (committing perjury in front of a
12 United States court), 18 U.S.C. § 2258 (professionals that do not report child abuse
13 that is learned of on federal grounds or facilities), 42 U.S.C. § 1988 (attorneys fees
14 for civil rights cases), and 42 U.S.C. § 13981 (crimes of violence motivated by
15 gender).

16 In addition, Plaintiff sets forth eleven counts or claims under State law: civil
17 conspiracy, mental injury to a child, intentional infliction of emotional distress,
18 malicious interference with family relations, obstruction of justice, false
19 imprisonment/custodial interference, intentional interference economic relations,
20 intentional destruction of property, perjury, outrageous abuse of authority, and
21 malicious abuse of process.

22 DISCUSSION

23 Complaints *in forma pauperis* are reviewed for legal sufficiency. 28 U.S.C.
24 § 1915(e)(2)(B)(i)-(iii). If the complaint is "frivolous, malicious, fails to state a
25 claim on which relief may be granted, or seeks monetary relief against a defendant
26 who is immune from such relief" then the district court is required to dismiss the
27 claim. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 n.7 (9th Cir. 2000).

28 This Amended Complaint fails to state a claim upon which relief may be

1 granted, and one of the defendants is immune from relief. The Amended Complaint
2 fails to state a claim upon which relief may be granted because there is no private
3 cause of action under the federal statutes that are cited and the statutes are not
4 applicable to the facts alleged. With no cause of action under a federal statute,
5 only state law claims relating to the child custody dispute are left. These leave the
6 Court without federal question jurisdiction to decide the claims.

7 Plaintiff asserts claims under five different statutes found in Title 18, which
8 is the federal criminal code. These statutes cover conspiracy against rights, fraud
9 against the United States, interfering with a United States court order, committing
10 perjury in front of a United States court, and failing to report child abuse that is
11 learned of on federal property.

12 All of the statutes except one require some connection with the federal
13 government. The statute that does not, 18 U.S.C. § 241, regards conspiracy against
14 constitutional rights, but the Ninth Circuit has already ruled that no private cause
15 of action exists under § 241. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (1980).

16 The other Title 18 statutes do not create subject matter jurisdiction because
17 they do not give a private cause of action and they do not apply to the facts alleged
18 in the Amended Complaint.

19 **A. There is no private cause of action under 18 U.S.C. §§ 1016, 1509, 1623,**
20 **and 2258.**

21 If Congress intends to create a private cause of action under a federal statute,
22 then federal courts should find a private cause of action under the given statute.

23 *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15 (1979).

24 Congress' intent is determined by examining "the language or structure of a statute
25 or the circumstances of its enactment." *Id.* "[W]hether a statute creates a cause of
26 action, either expressly or by implication, is basically a matter of statutory
27 construction." *Id.* If the language of the statute expressly gives a remedy then
28 courts should be wary when they are requested to add an additional remedy that is
not expressly provided for in the statute. *Id.*

1 The structure of these statutes indicates that Congress intended them to be
2 criminal only. They are placed within the United States Code alongside other
3 statutes over which the United States would have criminal jurisdiction. They
4 provide no civil remedies, only criminal remedies like a fine and imprisonment.
5 The language and structure of these statutes do not show any intent by Congress to
6 give a private cause of action under these statutes.

7 The circumstances of the enactment of Title 18 also do not indicate a private
8 cause of action exists. When Title 18 was passed into law, it took various federal
9 criminal statutes that were in effect on April 15, 1947, and organized them into
10 Title 18. 93 Cong. Rec. 5181, 5182 (1947). Congress understood the bill to be
11 targeted at the organization of criminal statutes in order to effectively prosecute
12 criminals. *Id.* “You will find no radical changes in the philosophy of our criminal
13 law in this bill. There is no attempt made here to coddle criminals and
14 wrongdoers.” *Id.*

15 The circumstances surrounding the enactment of Title 18 indicate that
16 Congress understands these statutes as primarily criminal. This, coupled with the
17 plain language of the statutes themselves, demonstrates Congress’ intent not to
18 create a private right of action under these statutes. Given the remedies under these
19 statutes and Congress’ understanding of the type of statutes that are placed under
20 Title 18, no relief can be granted to a private party under these statutes. As a
21 result, the introduction of these claims will not give Plaintiff legal sufficiency to
22 proceed with the Amended Complaint.

23 **B. The facts alleged do not meet the elements of 18 U.S.C. §§ 1016, 1509,**
24 **1623, and 2258.**

25 These statutes require the involvement of the federal government in one way
26 or another. Under § 1016 a false declaration must be made to the United States or
27 to one of its agencies. 18 U.S.C. § 1016. Under § 1509 there must be interference
28 with a United States court order. 18 U.S.C. § 1509. Under § 1623 perjury must be
committed in front of a United States court. 18 U.S.C. § 1623. Under § 2258 a

1 person must fail to report child abuse that he or she learns of on federal grounds or
2 facilities. 18 U.S.C. § 2258.

3 The Amended Complaint does not allege that false declarations were made
4 against the United States, but against the Plaintiff or other individuals (Ct. Rec.
5 10). There are no allegations of interference with a United States' court order, but
6 there are claims of interference with a State court order (Ct. Rec. 10 at 5-9).
7 Perjury in front of a United States court is not alleged, only perjury in front of a
8 State court (Ct. Rec. 10 at 8-10). The Amended Complaint alleges constitutional
9 deprivations and mental injury to Plaintiff's children, but nothing in the complaint
10 supports a claim that any child abuse was not reported that was learned of on
11 federal grounds (Ct. Rec. 10 at 9, 13). The claims are based on an underlying,
12 State court dispute, and there is no federal connection. Since these statutes do not
13 apply, even if there was a private cause of action under them this Court would still
14 be unable to provide relief.

15 **C. Claims under 42 U.S.C. §§ 1983 and 1988.**

16 This Court previously determined that there was only one Defendant against
17 whom a § 1983 claim could be brought because the other Defendants are not state
18 actors (Ct. Rec. 5). The Amended Complaint does not allege any additional facts
19 that indicate any change in Defendants' status as state actors. Nor has Plaintiff
20 alleged facts that would show that the single Defendant who is a state actor no
21 longer enjoys judicial immunity for those actions. Therefore, Plaintiff's cause of
22 action under § 1983 is still not legally sufficient, and attorney fees under § 1988
23 will not be applicable.

24 **D. 42 U.S.C. § 13981**

25 The United States Supreme Court has ruled that Congress had no
26 constitutional power to enact 42 U.S.C. § 13981. *United States v. Morrison*, 529
27 U.S. 598, 618 (2000). Therefore, no relief can be granted under this statute.
28

1 **E. Dismissal of Amended Complaint**

2 Plaintiff has failed to make a legally sufficient claim because the facts
3 alleged do not support causes of action under the statutes and some of the statutes
4 do not give a private cause of action. A *pro se* litigant must be given the
5 opportunity to amend her complaint to correct any deficiencies, unless the
6 “pleading could not possibly be cured by the allegation of other facts.” *Lopez*, 203
7 F.3d at 1130.

8 Plaintiff has had an opportunity to amend, and this pleading cannot be cured
9 by allegations of other facts. The federal statutes that Plaintiff relies on do not give
10 her any private causes of action, regardless of the facts she pleads. The other
11 claims are simply outside the scope of federal court jurisdiction. Claims like
12 interference with family relations, malicious interference with children, and
13 intentional infliction of emotional distress against private parties are not within the
14 subject matter jurisdiction of this Court to decide. The federal courts are not the
15 proper forum for this case. Therefore, this case is not legally sufficient to proceed
16 *in forma pauperis* and **this action is dismissed for failure to state a claim under**
17 **28 U.S.C. § 1915(e)(2).**

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter the
19 Order, forward a copy to Plaintiff, and **close the file.**

20 **DATED** this 14th day of December, 2007.

21
22 s/Robert H. Whaley
23 ROBERT H. WHALEY
24 Chief United States District Judge

25
26 Q:\CIVIL\2007\LaVelle\Order Dismissing Amended Complaint.wpd
27
28